

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA**

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**CRIMINAL NO: 09- 029**

**v.**

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**SECTION: “C”**

**MORRIS SMITH  
a/k/a “Ice”**

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**FACTUAL BASIS**

If this case were to proceed to trial the Government would prove the Defendant guilty beyond a reasonable doubt of Counts 1-4 of the Indictment. In those counts, the Defendant, MORRIS SMITH a/k/a “Ice” is charged with: *one*, participating in a conspiracy to distribute a quantity of cocaine base (“crack”); *two*, actually distributing a quantity of cocaine base (“crack”); *three*, knowingly and intentionally possessing in and affecting commerce a firearm, after having been convicted of a crime punishable by imprisonment for a term exceeding one year; *four*, knowingly and intentionally possessing in and affecting commerce a firearm which had the importer’s and manufacturer’s serial number removed, obliterated, and altered. The Government would establish the following through reliable and competent evidence:

On **September 23, 2008** at 3:42 p.m., Morris SMITH, a/k/a "Ice", arrived at the meet location (a bogus "store" on Oleander Street in the City of New Orleans and within the Eastern District of Louisiana) and informed the two undercover agents, Louisiana State Trooper ("LST") David Flauss and Bureau of Alcohol, Tobacco, and Firearms ("ATF") Special Agent ("S/A") Jason Townsend, that he could sell them a 1/4 of an ounce of crack cocaine for \$225.00. SMITH also stated he could sell them a 9mm black Hi-Point firearm for \$400.00. SMITH departed but, shortly later, returned to the store to tell LST Flauss and S/A Townsend that he needed to wait for the crack cocaine to arrive. SMITH borrowed S/A Townsend's cell phone and called number 504-355-6845 to arrange for the crack cocaine to be delivered to the store. SMITH also called an individual SMITH claimed was his brother, who was in possession of the 9mm black Hi-Point, at number 504-609-7490. SMITH directed this individual to the store location.

SMITH advised that both individuals were near the location so he and S/A Townsend walked outside the store to meet them. SMITH advised S/A Townsend that the crack cocaine would be brought by an individual driving a black Volvo. Moments later, S/A Townsend spotted the black Volvo at Oleander and Carrollton Ave. S/A Townsend gave SMITH \$225.00 and observed SMITH walk to the black Volvo. S/A Townsend saw SMITH enter the right rear door of the black Volvo and sit in the right rear seat. S/A Townsend then observed the driver, a black male later identified as Everett Horton, turn to his right and converse with SMITH and conduct an exchange. After the exchange, SMITH exited the black Volvo and immediately walked back to S/A Townsend. SMITH handed S/A Townsend a clear plastic baggie containing multiple small white rocks which appeared to be crack cocaine. SMITH then told S/A Townsend that the individual he claimed was his brother was across the street with the firearm. SMITH went to meet with this individual while S/A Townsend went back inside the store. While inside the store S/A Townsend counted seventeen (17) individually wrapped small rocks in the plastic baggie that SMITH had handed him.

SMITH then re-entered the store carrying a rag which he unwrapped to reveal a Hi-Point 9mm black Lugar model C9 bearing serial # P237237 inside a black holster. The holster contained 1 loaded magazine and the rag held a 2<sup>nd</sup> magazine. SMITH and S/A Townsend negotiated a price of \$350.00 for the firearm and the transaction was completed.

The suspected crack cocaine field-tested positive for the presence of cocaine. The LSP Crime Lab further tested the suspected crack cocaine and found that there was 4.73 net grams of cocaine base present. The Hi-Point 9mm black Lugar model C9 bearing serial # P237237 was test fired by Lloyd Morse of the St. Tammany Parish Sheriff's Office on Sept. 26, 2008 and it functioned as designed.

On **September 24, 2008** SMITH contacted S/A Townsend from 504-324-9938. SMITH advised that he would be at the store shortly and also asked if he was interested in buying a sawed-off shotgun from a friend of his. SMITH stated that he would arrange that transaction.

Sometime thereafter, SMITH arrived at the store and met with S/A Townsend. S/A Townsend asked SMITH about the possible firearm transaction. SMITH replied that he would contact him at a later time about the firearm sale.

On **September 30, 2008** at 4:36 p.m., SMITH arrived at the store and retrieved a Smith & Wesson 9mm pistol with an obliterated serial number from beneath his clothing and handed it to LST Flauss. LST Flauss then removed the magazine and unloaded the weapon. The pistol was loaded with thirteen rounds of 9mm ammunition. SMITH and S/A Townsend arrived at the price of \$625.00 for the weapon. SMITH received the money from S/A Townsend and departed the store at approximately 4:42 p.m. The firearm was later test fired on October 17, 2008 by Sgt. Harry O'Neal of the St. Tammany Sheriff's Office and it functioned as designed.

LST Flauss and S/A Townsend later learned that SMITH was prohibited from possessing any firearms due to the fact that he is a convicted felon. On October 26, 2004 SMITH pled guilty to

aggravated battery in Orleans Parish Criminal District Court under case number 451-553 “I” and was sentenced to three (3) years in the Department of Corrections - suspended - with two (2) years of active probation.

On November 7, 2008 ATF NEXUS expert S/A Michael Eberhardt determined that both the Hi-Point 9mm Lugar bearing serial number P237237 and the Smith & Wesson 9mm pistol with the obliterated serial number were manufactured outside the State of Louisiana and for them to have been found in Louisiana they would had to have traveled in and affected interstate commerce.

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**FREDERICK W. VETERS, JR.**  
Assistant United States Attorney

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DATE

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**FRANK SLOAN**  
Attorney for Defendant

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DATE

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**MORRIS SMITH**  
Defendant

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DATE